

Introductory Note: This document is a sample form vendor finance program agreement for energy efficiency equipment and can be readily adapted for small scale renewables equipment and project.

**Energy Efficiency Equipment
Vendor Finance Program Agreement**

between

_____, (Bank), and
_____, (Vendor)

First Draft for Discussion

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This Agreement is made this ___ day of _____, 20__ by and between _____ having its principal place of business at _____ (Bank) and _____ having its principal place of business at _____ (Vendor).

WHEREAS, VENDOR is marketing, developing, engineering, implementing and servicing energy efficiency equipment for commercial, industrial and institutional sector customers in _____ [geographic area] and many of these customers require financing to acquire VENDOR equipment;

WHEREAS, Bank is in the business of providing construction and term loans to such customers, subject Bank credit approval of individual customers and transactions, which loans can be used by customers to acquire the VENDOR equipment;

WHEREAS, Bank believes that many of its own customers may be interested to learn about and assess their applications for VENDOR's energy efficiency equipment and services;

WHEREAS, Bank and VENDOR wish to establish terms, conditions and procedures for their cooperation to market and originate energy efficiency equipment loans [or leases, as applicable];

NOW, THEREFORE, in consideration of the mutual benefits and covenants set forth below, Bank and Vendor hereby agree as follows:

1. Purpose of this Agreement. This Energy Efficiency Equipment Vendor Finance Program Agreement defines the terms, conditions and procedures of cooperation between Bank and VENDOR whereby the Bank will provide loan financing ("Loans") to VENDOR's customers for the customers to purchase the energy efficiency projects (Projects) developed and implemented by VENDOR.

2. Energy Equipment Loans. Bank will market, originate, provide (subject to Bank credit approval) and administer loans ("Loans") to VENDOR customers ("Customers" or "Borrowers")

to finance implementation of energy efficiency equipment and projects (“Projects”). Expected Loan terms are defined in the Loan Term Sheet, Attachment A.

[*Note:* The Loan Term Sheet includes definitions for eligible borrowers, eligible projects, eligible use of Loan proceeds, minimum and maximum Loan size, expected tenor, pricing, fees, disbursement procedures, etc. A first draft is attached. It is recommended that such a Loan term sheet be attached to this Agreement, but that the parties have flexibility to adapt loan terms to specific transactions, customer needs and circumstances as they develop.]

3. Required Terms of VENDOR Installation Contract. Eligible Projects will be implemented by _____ (VENDOR) pursuant to a turnkey installation contract between VENDOR and Borrower, the form of which is subject to review and approval by Bank, and is attached hereto as Attachment K. Required minimum terms of the installation contract are:

- (a) VENDOR will install the project on a turnkey basis, and have single point responsibility to completely construct and install the project according to the agreed time schedule, budget, specifications and commissioning protocol;
- (b) _____ [other, e.g., extended warranty, maintenance services, etc.].

[*Note:* This section must be adapted to follow the Vendor’s business methods and contract terms.]

4. Management of Customer Energy Equipment Loan Program

- Name VENDOR Manager for this Program.
- Name VENDOR Manager for this Program at each relevant locale, as applicable.
- Name Bank Manager for this Program, at its Headquarters.
- Name Bank Manager for this Program at each relevant Bank Branch.

Define division of responsibilities.

- The Program relationship and methods will be developed by Bank and VENDOR at Headquarters level.
- Operationally, local VENDOR office will work with local Bank branch to market and originate loans. Bank Headquarters should issue policy and operating guidelines supporting the Program to its branch offices.
- Headquarters managements must continually evaluate, improve and expand the Program, resolve problems, and help structure credit approvals on specific transactions.

5. Target Markets. VENDOR and Bank will concentrate their marketing activities for this program in the following sectors and locations:

[*Note:* This topic is important and provides a key basis for designing and coordinating marketing activities. VENDOR must confirm Bank perspective on creditworthiness of various target sectors.]

6. VENDOR Role in Project and Loan Marketing.

[*Note:* The following sections outline the project development cycle, beginning with marketing. This whole project cycle should be outlined in discussion with VENDOR, so this section can be adapted precisely to VENDOR practices. A typical project development cycle is used to inform this first draft.]

- VENDOR identifies and markets its projects and services to Customers (prospective Borrowers for the Bank). VENDOR provides project preliminary feasibility study and proposal to customers for the Projects.
- VENDOR will market Loan Program, educate Customers on Bank financial services and Loan terms and conditions, using information approved by the Bank.
- Loan Marketing information is attached as Attachment B.
- Bank will cooperate in Loan marketing as requested by VENDOR.

7. Customer Expression of Interest & Preliminary Credit Reviews by Bank.

- Customers interested in Loan financing will be asked to submit a formal non-binding Expression of Interest. A form Expression of Interest Application is attached as Attachment C. This will include initial credit information, suitable for Bank screening of Customer credit.
- Bank will conduct preliminary reviews of Customer creditworthiness based on information provided. This information will include Customer's VENDOR bill payment record, as applicable. Bank will consult with VENDOR and PMO to seek ways to make the transaction creditworthy for Bank lending. Bank will provide the results of its review within ___ days after receiving the Expression of Interest and related information.

[*Discussion Issues:* Is the Customer Expression of Interest a necessary step? Screening of customer credit early in development of projects is important so that the VENDOR focuses its project engineering and development efforts with creditworthy customers. Therefore, some screening of prospective customer credits is an important Bank service and is recommended to be included as part of this Agreement. Customer credit approval is a core topic; when reviewing specific customers and transactions, the parties should be seeking to define what is needed to make a project bankable. Addressing this topic is key to success of the program.]

8. Bank Role in Project Marketing. Bank will identify existing Bank customers:

- in the target market sectors and locales;
- who may have potential for economic EE projects and interest in VENDOR project and services; and,
- with whom Bank is willing to take on additional EE project term loan exposure.

Bank will review this list of Customers with VENDOR, provide senior management contact information for the Customer, and facilitate an introduction of VENDOR to appropriate senior

management officials of the Customer. The parties will then agree to undertake a marketing program to contact these Customers with the offer of VENDOR projects and services. Marketing literature on VENDOR projects and services for Bank distribution to prospective Customers is attached as Attachment J.

[*Note:* Design of this marketing program to be developed. It could take several directions and formats, e.g., joint sales calls with Bank and VENDOR, workshops for customers, direct mail of VENDOR approved literature, etc. Formal record-keeping methods for this marketing activity should be defined. Bank must define a method for providing an introduction to customer's top management.]

9. Target Loan Volumes. To be developed. [*Note:* This may not be necessary, but can be useful as a means to motivate Banks, and as a basis for negotiating volume discounts for VENDOR customers.]

10. Loan Application and Loan Proposal.

- Customer will make formal application for a Loan. VENDOR will assist Customer to complete the Loan Application, a form for which is Attachment D. Loan Application will include description of the Project and cost estimates.
- Bank, at its option, will make Loan Proposals to the Customer, with a copy to VENDOR. A Sample Loan Proposal Form is Attachment E.
- Loan Proposals are expected to be subject to final Bank credit approval. Loan Proposal will indicate expected credit conditions and Bank steps to complete credit approval.
- VENDOR will assist Bank to gather further information as needed from Customer and about the Project to support Bank process of evaluating a Loan Application and preparing a Loan Proposal. Bank will consult with VENDOR to seek ways to make the transaction creditworthy for Bank lending.
- Bank will make a Loan Proposal, or otherwise make its decision not to make a Loan Proposal, within ___ days of receiving a complete Loan Application. If Bank chooses not to make a Loan Proposal, it will explain why, in writing, to VENDOR and Customer.

11. Credit Approvals and Loan Underwriting Guidelines.

- Banks will make credit decisions. Provide explanation of Bank credit processes, including delegated credit authority at branch level.
- Loan Underwriting Criteria are outlined in Attachment A.
- Bank agrees to use its best efforts to structure Loans to meet its credit criteria.

[*Discussion Issues:* How to support the Bank to make as many credit approvals as possible? What is role of Bank headquarters versus Bank Branches in the credit process? Recommend that credit decisions for initial transactions be taken at Bank headquarters in concert with branches, so that VENDOR can have effective liaison Bank, and headquarters support in the crucial credit approval process.]

12. Project Due Diligence and Engineering Review. Outline other Project due diligence criteria, including process for conducting technical and engineering reviews of Projects.

[Note: VENDOR may want to include a sample form summary project feasibility study as an attachment to this Agreement, so that the Bank becomes familiar with key project parameters.]

13. Loan Documentation. Define Bank Loan documentation. Form Loan Agreement, including mortgage, insurance, and other form closing documents, are provided as Attachment G.

14. Summary Loan Origination Process and Loan Prospect & Origination Report.

- Attachment H provides a table summarizing Loan origination steps, showing each key step, indicating the VENDOR role, the Bank role, and related documents, and committed Bank and VENDOR response times at each step in the process. This Attachment H will be used by VENDOR and Bank personnel.

- The parties will maintain a Loan Prospect & Origination Report, updated monthly, which tracks each Loan prospect and its status within the process of Loan origination and level of advancement in the process. An initial form of this Report is provided as Attachment I.

15. Loan Administration. [The roles and mutual commitments of the parties during project operations and Loan administration period should be discussed. Bank shall administer Loans according to its own procedures. VENDOR may provide certain Project operations services to the Customer, including project monitoring, energy savings verification, extended warranties, etc. The parties should agree to some form of mutual reporting and information sharing, which would need to be approved by the Customer in the operating Loan agreement and project contracts. VENDOR can report to Bank on energy savings and project monitoring results, for example. If VENDOR makes any financial commitment to Customer during the operations period backing system warranties or savings, this could be assigned to the Bank as additional security. VENDOR can also agree to cooperate with Bank in Loan default events if this could be at all helpful to the Bank. Bank, under equipment mortgage agreement, could have provisions to deny equipment use/access to customer; VENDOR could cooperate in this regard, assuring that electronic keys, for example, are included in the project design.

16. Fees. No fees are due from Bank to VENDOR or VENDOR to Bank for services and work performed pursuant to this Agreement. All compensation for Bank and VENDOR will derive from fees charged to Customers.

[Note: Some fees payments may be appropriate from Vendor to Bank.]

17. Non-exclusive and Exclusive Arrangements.

- Once an Expression of Interest is submitted by Customer through VENDOR to Bank, Bank shall have a first right of refusal to request a Loan Application from Customer and to make a Loan Proposal for a period of ___ days. If Bank has not made Loan Proposal within this period to the subject customer, VENDOR may seek to arrange loan financing for the Customer from other banks. Loan Proposals may include exclusivity provisions with Customers.

- VENDOR may seek to arrange loan financing for its Customers from other banks and Bank may provide Loan financing to other customers for energy equipment and project independent of VENDOR.

- VENDOR agrees to work solely with Bank with respect to financing projects for any Customers introduced to VENDOR by Bank.

[Discussion Issue: Should this be an exclusive arrangement? Customer is not a party to this Agreement and can not be bound. VENDOR has interest in arranging Loans for Customer. A First Right of Refusal period seems reasonable. Bank must prove to VENDOR that it can provide necessary Loan services and approve many transactions. Some form of exclusivity is advisable in order to make the Program attractive for both parties, and provide a framework for mutually beneficial implementation. This issue could be assessed again within six to 12 months after Program start. Exclusivity could also be defined with respect to specific market segments where the Bank is most comfortable with Customer credit characteristics.]

[Note: The following sections reflect typical legal provisions. VENDOR will likely have standard language already developed for this topics.]

- 18. Legal Status of Parties and Governing Law.
- 19. Representation and Warranties.
- 20. Term and Termination. Term of this Agreement shall be ___ years. Termination provision need to be defined: for example, Agreement can be terminated by either party at its option with 30 days notice to the other party. Bank will honor all commitments made to Customer on outstanding Loan Proposals and Loan Agreements already executed prior to termination. What happens in event of termination should be defined. I am not sure if default and remedies on default provisions apply for this Agreement.
- 21. Confidentiality & Proprietary Information.
- 22. Resolution of Disputes.
- 23. Notice.

Execution

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this Agreement on the date below.

_____ [VENDOR]	_____ [BANK]
BY: _____	BY: _____
NAME: _____	NAME: _____
TITLE: _____	TITLE: _____
DATE: _____	DATE: _____

Attachments

- A. Energy Project Loan Term Sheet
- B. Loan Marketing and Bank Financial Services Materials
- C. Customer Loan Expression of Interest Form
- D. Loan Application Form
- E. Sample Form Loan Proposal
- F. Loan Underwriting Guidelines
- G. Sample Form Loan Agreement
- H. Summary Loan Origination Process Table
- I. Form of Loan Prospect & Origination Report
- J. VENDOR Marketing Literature approved for distribution to Bank customers
- K. Form of VENDOR Installation and Services Contract

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_____, (Vendor)

First Draft for Discussion

**Attachment A
Draft Term Sheet for Energy Project Loans**

Borrowers: Eligible Borrowers include _____ [define target borrowers for the program.]

Lender: _____ [Bank]

Eligible Projects: An "Eligible Project":

- (a) means a project or an investment in goods and services aimed at improving the efficiency of energy use in buildings, industrial processes and other energy end-use applications;
- (b) must use proven technology;
- (c) must be developed by VENDOR or otherwise with competent energy audit/feasibility studies, and include energy savings monitoring plans, acceptable to Bank;
- (d) will be implemented by Vendor pursuant to a turnkey installation and service contract with the borrower, the required terms of which are defined in ____, below.

Use of Loan

Proceeds: Eligible use of loan proceeds needs to include the full capital investment which the customer must make in their new energy system, including, as applicable:

- a. energy efficiency and energy using equipment
- b. equipment installation
- c. engineering costs for the equipment
- d. other directly related soft costs, such as construction period interest, finance fees, and project development costs

**Sources of Funds
for Projects:**

Borrower will contribute a minimum of ___% [e.g., 20%] own funds toward total Project Costs.

Loan Currency: _____

Minimum Loan: _____

Maximum Loan: To be negotiated with Bank, and based, case-by-case, on Borrower debt service capacity as determined using agreed underwriting guidelines.

Loan Term: Maximum, ___ years.

Payment Schedule: _____

Interest Rate: _____ on market terms. Bank requested to defined range based on Loan size, borrower credit and other criteria. [*Note:* VENDOR may want to negotiate some volume discounts on interest rate with the Bank.]

Prepayment Option: Borrower prepayment options, to be negotiated with Bank. [*Note:* This can also be an important provision for customers.]

**Loan Disbursement
& Construction**

Financing: Bank shall disburse the loan in one or several installments. Typical disbursement period is estimated to be 3-6 months; a disbursement period up to ___ months will be considered. The loan may be disbursed into the account of contractor company (VENDOR) performing the project works after the Bank receipt of invoices for completed portion(s) of the Project, which invoice shall be transferred and accepted for payment by Borrower. A “Schedule of Values” will be included in the construction contracts and Loan Agreement defining: construction milestones, construction costs to achieve each milestone, independent inspection confirming achievement of milestones, and sources of funds for each milestone payment included estimated Loan disbursement. Construction finance plan and Schedule of Values must be acceptable to all parties. [*Note:* Construction financing needs and procedures to be discussed with VENDOR.]

**Loan Repayment &
Security:**

Sources of Loan repayment and security would include the following.

- a) Full faith and credit payment obligation of the Borrower.
- b) First security interest in the Project equipment.
- c) assignment by Borrower of payments due Borrower under the Vendor contracts for extended warranties, guarantee of energy savings, etc.
- d) Debt service reserve fund (DSRF), equal to a minimum of ___ [e.g., 2] monthly Loan payments. Borrower shall establish an account with the Bank where the DSRF will be deposited and give the Bank a preferred

drawing right on this account for debt service. [Note: to be discussed with Bank. I think this is good practice.]

- e) Other security, (e.g., mortgage on fixed assets, revenue pledge, escrow accounts in which designated Borrower funds or revenue streams are deposited, to be established with the Bank, preferred drawing rights on Borrower accounts, etc.) which may be required by the Bank.

Loan Underwriting

Criteria:

To be defined by Bank in consultation with VENDOR. Bank requested to propose underwriting criteria. Sample criteria are:

- (a) no negative credit history; current on outstanding debts
- (b) the legal representative(s) stated in the Borrower's business license and as the case may be, sole or majority owner that are natural persons or directors, shall have no criminal record
- (c) current on energy utility bills
- (d) current ratio of ____ [1.50] or greater (with loan proceeds)
- (e) quick ratio of ____ [1.15] or greater (with loan proceeds)
- (f) ratio of debt to total assets of less than or equal to ____% [70%]
- (g) profitability (breakeven or greater) for last two years (other than for a newly incorporated Borrower)
- (h) audited financial statements from acceptable qualified auditors, and tax receipt from relevant tax revenue agencies showing current status on taxes [Note: Must discuss minimum standards for financial statements.]
- (i) estimated debt service coverage ratio (free cash flow to Loan debt service) on term loans of a minimum ____ [1.50]; [Note: "Free cash flow" calculation may be performed inclusive of a prudent fraction, e.g., 70%, of the project's estimated energy cost savings.]
- (j) economic feasibility study for proposed project, acceptable to Bank
- (k) Borrower own funds contributing minimum ____% [20%] of project capital costs
- (l) total annual sales of a minimum _____
- (m) total net assets of a minimum _____
- (n) quality management, in the judgment of Bank
- (o) acceptable loan security, in the judgment of Bank.

Loan Application:

Borrower shall submit the following documents to the Bank to apply for the Loan (to be determined by Bank, examples follow):

1. Loan Application (provided by Bank and completed by Borrower).
2. Financial Statements (Income Statement, Balance Sheet, if available) for last two years
3. Project Investment Plan, specifying the intended measures to be implemented, their costs, sources of financing, estimated energy and cost savings, plan for implementation and contracting of the works and technical maintenance of their implementation.

4. Legal Registration Certificate (copy).
5. Other additional documents (to be defined by Bank).

**Loan Origination
Procedures &
Schedule:**

Loan origination procedures and schedule, including Bank response time for processing Loan Applications, rendering credit decisions once complete information is received, and closing loans on accepted applications, to be defined by Bank.

**Loan
Documentation:**

Bank to provide Loan documentation, subject to approval of VENDOR.